

Exhibit 4

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 No. 18 Civ. 2949 (ARR) (RER)

- - - - -x

5
6 SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

7
8 Plaintiffs,

-against-

9
10 XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,
11 Defendants.

12 - - - - -x

13
14 16 Court Street
Brooklyn, New York 11241
15 August 30, 2022

1:28 PM

16
17 DEPOSITION of BORIS MIRKIN, a
18 Plaintiff in the above-entitled action,
19 held at the above time and place, taken
20 before SAMUEL HITLIN, a Shorthand Reporter
21 and Notary Public of the State of New
22 York, pursuant to the Federal Rules of
23 Civil Procedure, order and stipulations
24 between Counsel.

25 * * *

1 B. MIRKIN

2 Q. And what was your degree in?

3 A. In computer science.

4 Q. Computer science.

5 And what was the first job that
6 you got after college?

7 A. I was fixing computers in
8 Manhattan, in midtown Manhattan. I don't
9 remember the company name.

10 Q. Okay. About how long did you do
11 that?

12 A. Until 2002, when I was laid
13 off -- downsized.

14 Q. Understood.

15 And then what was the next job
16 you got after that?

17 A. Then I applied to the police
18 academy.

19 Q. And you became a New York police
20 officer?

21 A. Yes.

22 Q. Thank you for your service.

23 What is your -- I don't know. I
24 guess -- I'm not -- I'm not that familiar
25 with the police service, but do you have a

1 B. MIRKIN

2 Well, let's talk about XOOM --

3 A. Yes.

4 Q. -- which is the one we're here
5 to talk about today.

6 How did you first hear about
7 XOOM?

8 A. I was shopping around for better
9 rates. There were multiple ESCOs
10 available, and they had different offers.
11 And I found XOOM. It seemed that their
12 rate was better than previous ESCO rates,
13 so I switched to XOOM.

14 Q. Okay. And you -- that shopping
15 and those comparisons that you were doing
16 were by comparing the rate that XOOM was
17 offering to your current -- your rate --
18 then current rate with Citizens Choice?
19 That was one part of it, right?

20 A. Correct.

21 Q. And the other part was to
22 compare the rates that were being offered
23 by other ESCOs, which you reviewed online?

24 A. Correct. Yes.

25 Q. Did you speak with anyone on the

1 B. MIRKIN

2 Q. Do you remember receiving an
3 e-mail -- this e-mail from XOOM?

4 A. Yes. This is my e-mail.

5 Q. The e-mail address that's listed
6 there under the billing info is your
7 e-mail address?

8 A. It's mine, yes.

9 Q. Is that your phone number
10 as well?

11 A. And my phone number, yes.

12 Q. Okay. The account was opened in
13 your wife's name?

14 A. Correct. Yes.

15 Q. And why was that?

16 A. At the time, she needed proof of
17 residence.

18 Q. Got it.

19 At the time you enrolled with
20 XOOM, did you understand that your rate
21 would be a rate that could vary from month
22 to month?

23 A. Yes. The contract said so.

24 Q. And if you look with me at
25 Exhibit 5 -- it's in the stack that you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, Samuel Hittin, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of September,
2022.



SAMUEL HITTIN

* * *